

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

KATHY OLIVAS,

Plaintiff,

v.

No. CV 20-936 CG

KILOLO KIJAKAZI,¹
Commissioner of the
Social Security Administration,

Defendant.

**ORDER GRANTING UNOPPOSED MOTION TO AWARD ATTORNEY FEES
UNDER THE EQUAL ACCESS TO JUSTICE ACT**

THIS MATTER is before the Court on the parties' *Stipulated Motion for Award of Attorney Fees Under the Equal Access to Justice Act* (the "Unopposed Motion"), (Doc. 29), filed October 26, 2021. In the Unopposed Motion, the parties indicate that Ms. Olivas seeks attorney fees in the amount of \$4,365.60, and that she "also seeks costs in the amount of \$400.00, representing the Court filing fee, which is to be paid from the Department of Justice's Judgment Fund." (Doc. 29 at 1). The Commissioner stipulates to the attorney fees and does not object to her seeking costs. *Id.* The Court, having reviewed the Unopposed Motion under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412, finds the Unopposed Motion is well-taken and shall be granted.

IT IS THEREFORE ORDERED that Plaintiff be awarded \$4,365.60 in attorney fees pursuant to EAJA, 28 U.S.C. § 2412, made payable to Plaintiff but mailed to Plaintiff's attorney. See *Astrue v. Ratliff*, 560 U.S. 586 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

¹ Kilolo Kijakazi was appointed Acting Commissioner of the Social Security Administration on July 9, 2021.

IT IS FURTHER ORDERED that Plaintiff be awarded \$400.00 in costs, representing the Court filing fee, to be paid from the Department of Justice's Judgment Fund. See 28 U.S.C. § 2412; *Montoya v. Kijakazi*, 1:19-cv-00271 JAP/LF, 2021 WL 3602427 (D.N.M. July 20, 2021) (finding plaintiff entitled to recoup the cost of filing).

IT IS FINALLY ORDERED that if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.



THE HONORABLE CARMEN E. GARZA
CHIEF UNITED STATES MAGISTRATE JUDGE